IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL ST.NO. 1301 OF 2007.

Vivek Ramkrishna Baelshetty & others. ... Appellants.
Versus.
Jayant K. Thakur. ... Respondent.

Shri S.B.Prabhavalkar for the Appellants.

Shri K.Narayanan i/by M/s.Narayanan & Narayanan for the Respondent.

Ms.S.D.Khot for the intervenor.

CORAM : ABHAY S.OKA, J.

DATED : 25th January, 2007.

P.C.:

1. Admit. The Respondent waives service. Taken up for hearing forthwith.

2. By the impugned Judgment and decree, the learned trial Judge has dismissed the suit filed by the Appellants for want of jurisdiction. The submission of Shri Prabhavalkar, the learned Advocate for the Appellants is that the suit could not have been dismissed in this fashion as on the face of it, section 42 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 will not apply considering the reliefs claimed in the plaint.

3. After arguing the matter for some time, the learned Counsel appearing for the Respondent fairly stated that the impugned order may be quashed and set aside and the trial Court may be directed to consider the Notice of Motion taken out by the Appellants and

decide the same immediately on merits. He submitted that while considering the Notice of Motion on merits, the trial Court may be directed to take into account the submission of the Respondent as regards the bar of suit created by section 42 of the said Act of 1971. The learned Counsel for the Respondent, however, opposed continuation of the ad-interim relief.

4. The suggestion made by the learned Counsel for the Respondent certainly deserves consideration. The impugned order has been passed on 17th November 2006. The impugned order records that the interim order passed will continue for a period of one month from the date of the order. The learned Counsel for the Respondent pointed out the roznama of the case which does not show that after 13th June 2006, the ad-interim relief granted earlier on 8th June 2006 was continued. Shri Prabhavalkar submitted that though roznama does not disclose that after 13th June 2006 ad-interim relief granted on 8th June 2006 was continued, in fact the relief continued till the disposal of the suit by the trial Court.

5. In my view it is not necessary to resolve this controversy. The trial Court has disposed of the suit on the ground of bar of jurisdiction in most unsatisfactory manner. In fact the Notice of Motion taken out by the Appellants/Plaintiffs ought to have

been heard on merits. The roznama recorded on 8th June 2006 shows that atleast till 13th June 2006, the Respondent was directed not to proceed with the construction on the area covered by the Temple. If the Notice of Motion is to be heard on merits, the said order has to continue till the disposal of the Notice of Motion.

6. Hence the Appeal is disposed of by the following order:

i) The impugned Judgment and decree dated 17th November 2006 is quashed and set aside and S.C.Suit No.2490 of 2006 and Notice of Motion taken out therein are restored to file. The parties are directed to appear before the trial Court on 2nd February 2007. The parties are permitted to file further pleadings and/or documents on or before 9th February 2007.

ii) The learned trial Judge will decide the Notice of Motion as expeditiously as possible and in any event on or before 17th February 2007. The learned trial Judge while considering the question of existence of primafacie case is bound to consider the claim of the Respondent as

regards bar of suit created by section 42 of the said Act of 1971.

iii) Till disposal of the Notice of Motion, ad-interim relief granted by the trial Court on 8th June 2006 will continue to operate. It is made clear that the Notice of Motion will be decided by the trial Court without being influenced by the continuation of the ad-interim relief by this Court. All contentions of the parties including the contention regarding bar of suit are kept open.

iv) The parties and the concerned Court will act on an authenticated copy of this order.

v) It is clarified that this Court has made no adjudication on the submission made by the learned Advocate for the Appellant that ad-interim relief continued to operate even after 13th June 2006. It is made clear that the parties to the suit will abide by the ad-interim order passed today as of today.

vi) No order as to costs.

Judge.